

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, JULY 2, 2020

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PETITION OF

DIRECT ENERGY BUSINESS LLC

CASE NO. PUR-2020-00013

For a declaratory judgment
and injunctive relief against
Virginia Electric and Power Company
d/b/a Dominion Energy Virginia

PETITION OF

DIRECT ENERGY BUSINESS LLC

CASE NO. PUR-2020-00044

For a declaratory judgment
and injunctive relief against
Virginia Electric and Power Company
d/b/a Dominion Energy Virginia

ORDER

On January 21, 2020, Direct Energy Business LLC ("Direct Energy") filed a petition ("First Petition") with the State Corporation Commission ("Commission") for a declaratory judgment and injunctive relief against Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("Dominion"). In the First Petition, Direct Energy sought an order (i) directing Dominion to immediately support the establishment of two electronic data interchange set-ups, also referred to as subaccounts, for use by Direct Energy customers; and (ii) finding that Dominion must support an unlimited number of subaccounts at the request of Direct Energy in the usual course of business. In the alternative, Direct Energy requested that the Commission initiate a rulemaking proceeding to establish the number of subaccounts that a competitive service provider ("CSP") may obtain and the process for obtaining them.

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On January 30, 2020, the Commission directed Dominion and any interested party to file a response to the First Petition on or before February 17, 2020, and permitted Direct Energy to file a reply to any response on or before February 28, 2020. Dominion and Direct Energy each timely filed responses pursuant to the January 30, 2020 Order.

On March 11, 2020, the Commission entered an order appointing a Hearing Examiner to conduct further proceedings relative to the First Petition on behalf of the Commission and to file a final report.

On March 9, 2020, Direct Energy filed with the Commission a Petition for Declaratory Judgment and Request for Expedited Action ("Second Petition") against Dominion seeking an order finding that a customer of Dominion has the right to purchase 100% renewable energy from a CSP under § 56-577 A 5 of the Code of Virginia ("Code") as long as the customer has executed a service contract with the CSP prior to the effective date of a compliance filing submitted by Dominion associated with an approved tariff for Dominion's provision of 100% renewable energy.

On March 13, 2020, the Commission entered an Order ("March 13th Order") docketing the Second Petition as Case No. PUR-2020-00044. In addition, the March 13th Order combined Case Nos. PUR-2020-00013 and PUR-2020-00044 without consolidation and appointed a Hearing Examiner to conduct all further proceedings in the combined cases on behalf of the Commission and to file a final report. Among other things, the March 13th Order directed the Hearing Examiner to "establish a procedural schedule for the filing of any necessary additional testimony and a public hearing."¹ The March 13th Order also specified that the hearing in the combined cases should "include consideration of the technical requirements necessary for the

¹ March 13th Order at 3.

relief requested in the [First and Second] Petitions and the capability of Dominion and affected CSPs to satisfy these requirements."²

On April 3, 2020, Direct Energy and Dominion filed a Joint Statement of Disputed and Undisputed Facts ("Joint Statement"). Among other things, Direct Energy and Dominion recognized Calpine Energy Solutions, LLC's ("Calpine") unopposed Notice of Participation and Motion to Intervene in Case No. PUR-2020-00044 and represented that Calpine participated in discussions regarding the disputed and undisputed facts.³ Direct Energy, Dominion, and Calpine (collectively, the "Parties") also agreed to continue generally in Case No. PUR-2020-00044 issues relating to (1) Dominion's 60-day advanced notice requirement before initiating a large volume of customer activity; (2) the limited ability of Schedule 10 customers to switch to a different rate schedule during certain periods; and (3) the ability of Schedule GS-2T customers to switch to a new rate schedule before being eligible to purchase from a CSP.⁴

Furthermore, the Parties identified the following question as the "Threshold Issue" for resolution in Case No. PUR-2020-00044:

Whether a retail customer may purchase 100% renewable energy from a CSP pursuant to [§ 56-577 A 5 b of the Code] if that customer has executed a service contract with the CSP before [Dominion] files an approved 100% renewable energy tariff with the Commission, even if such customer has not yet enrolled in or switched to the CSP's electric supply service at the time [Dominion] files an approved 100% renewable energy tariff with the Commission.⁵

Direct Energy, Dominion and Calpine recognized a series of undisputed facts relating to the Threshold Issue and represented that there appeared to be no disputed facts pertaining to the

² *Id.* at 3-4.

³ Joint Statement at 2.

⁴ *Id.* at 3.

⁵ *Id.*

Threshold Issue. They also agreed to the resolution of the Threshold Issue based upon written briefs and, if necessary, oral argument conducted electronically or telephonically.⁶

On April 17, 2020, Direct Energy, Calpine, and Dominion filed opening briefs on the Threshold Issue, and on May 1, 2020, Direct Energy, Calpine and Dominion filed responses.

On May 12, 2020, Senior Hearing Examiner A. Ann Berkebile filed her Ruling and Certification to the Commission ("Ruling"). In her Ruling, the Senior Hearing Examiner made the following findings and recommendations:

- (1) The Commission has the authority to resolve the Threshold Issue pursuant to 5 VAC 5-20-100 C and § 56-6 of the Code;
- (2) Direct Energy and Calpine have standing to raise the Threshold Issue;
- (3) The Commission's consideration of the Threshold Issue is not barred by *res judicata*;
- (4) Section 56-577 A 5 b of the Code requires that a customer's enrollment and associated purchase of renewable energy from a CSP must be completed before the utility files an approved 100% renewable energy tariff as a condition of the CSP's continued ability to provide service to such customer.⁷

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the recommendations of the Senior Hearing Examiner should be adopted, as discussed herein.

We agree with the Senior Hearing Examiner that the Commission has authority to resolve the Threshold Issue presented in these proceedings, that Direct Energy and Calpine have

⁶ *Id.* at 3-8.

⁷ Ruling at 13.

standing to raise the Threshold Issue, and that the Commission's consideration of the Threshold Issue is not barred by *res judicata*, for the reasons set forth in the Ruling.⁸

We further agree with the Senior Hearing Examiner that the plain language of the Code mandates that a customer must have already enrolled in or switched to the CSP's electric supply service at the time Dominion files an approved 100% renewable energy tariff with the Commission in order to take such service from the CSP after Dominion's tariff becomes effective. Section 56-577 A 5 b provides that:

Individual retail customers of electric energy within the Commonwealth, regardless of customer class, shall be permitted ... [t]o continue purchasing renewable energy pursuant to the terms of a power purchase agreement in effect on the date there is filed with the Commission a tariff for the incumbent electric utility that serves the exclusive service territory in which the customer is located to offer electric energy provided 100 percent from renewable energy, for the duration of such agreement.

As the Senior Hearing Examiner notes, § 56-577 A 5 a does not authorize customers to enter into agreements with CSPs, but instead "allows retail customers to purchase 100% renewable energy from CSPs if the incumbent does not offer a 100% renewable energy tariff."⁹ Once the incumbent utility offers an approved 100% renewable energy tariff, customers are no longer allowed to purchase from CSPs *unless they are already purchasing* from a CSP pursuant to an effective power purchase agreement. The Code clearly states that such customers may "continue purchasing" renewable energy from the CSP. Consequently, the customer *must already be purchasing* from the CSP at the time Dominion files its tariff (and not merely have entered into an agreement to do so in the future), else there would not be any purchases to continue.

⁸ See, *id.* at 8-10.

⁹ *Id.* at 12.

Accordingly, IT IS SO ORDERED and these matters are continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.